

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

ARTURO CABALLERO,)
)
)
Movant,)
)
)
v.) Case No. 07-00197-CV-W-HFS
)
)
UNITED STATES OF AMERICA,)
)
)
Defendant.)

ORDER

Movant seeks sentencing relief under 28 U.S.C. § 2255. The Eighth Circuit has already denied sentencing relief on direct appeal. United States v. Caballero, 420 F.3d 819 (2005). The legal basis for relief, under United States v. Booker, 543 U.S. 220 (2005) is not available on collateral attack. Movant can, however, advance inadequate representation as a ground for relief. He asks me to rule that if the comments made by me at sentencing had been presented to the panel, it would have remanded the case to me for resentencing.

The panel did consider the sentencing record, according to the opinion, and the dissent. Movant is in effect asking me to rule that the majority was wrong in concluding I would not probably have handed down “a more favorable sentence” if I had realized the Guidelines were advisory. Without attempting to reconstruct my thought process I believe I must not second-guess the majority ruling of the panel. I have no authority to say the majority was wrong.*

*A rereading of the transcript indicates my principle concern was over a two-point issue relating to leadership. That does not loom large in considering whether a 360 month sentence should be imposed. The minimum Guideline sentence would be 360 months even if the offense level were reduced. Below Guideline sentences are seldom used.

There was no defective presentation of sentencing issues by appellate counsel. The record reflects the panel had the full benefit of the record that movant says should have been presented.

The motion for sentencing relief must therefore be DENIED. Any request for certifying this case for appealability will also be DENIED. SO ORDERED.

/s/ Howard F. Sachs
HOWARD F. SACHS
UNITED STATES DISTRICT JUDGE

April 25, 2007

Kansas City, Missouri